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April 1, 2008

VIA Electronic Mail and Hand Delivery

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
email: jnj@cpuc.ca.gov

Re: CLECA's Comments on Draft Resolution E-4160

Dear Mr. Gatchalian:

The California Large Energy Consumers Association (CLECA) appreciates the opportunity to comment on Draft Resolution E-4160. Draft Resolution E-4160 has been prepared to implement SB 1036. This statute eliminates the responsibility of the California Energy Commission (CEC) to use funds collected from investor-owned utility (IOU) ratepayers to provide supplemental energy payments to renewable energy resources seeking recovery of payments in excess of market prices. These funds are collected through the Public Goods Charges (PGC), a share of which revenues is allocated to renewable energy uses. Market prices for this purpose are defined as the Market Price Referent (MPR) developed annually by the Commission.

SB 1036 reduces the amount of renewable-related PGC funds allocated to renewable energy and transfers the unencumbered funds collected to date from the CEC to the utilities. The use of these funds will continue to be targeted to paying above-market costs of renewable energy contracts resulting from competitive bid processes undertaken by the utilities. However, the bill also provides for a limit on the total dollars available for this purpose equal to the amount of unencumbered funds currently accrued plus the portion of PGC funds that would have been collected at a reduced renewable funding level going forward through January 1, 2012. CLECA offers the following comments on the Draft Resolution.



First, to its credit, the Energy Division has prepared a very clear and informative resolution that provides useful background on this complicated matter. CLECA particularly applauds the conclusion that future eligibility requirements will apply to all RPS projects that have not yet been approved or rejected by the Commission. We concur that “the [same] standards must be applied to all pending and forthcoming contracts in order to promote the efficient use of limited above-market funds in a manner that maximizes ratepayer benefit” (Draft Resolution, p. 17). CLECA recommends, however, that the Draft Resolution be revised to eliminate any ambiguity in this regard by including the principle that the same standard of review should be applied to bilateral renewable contracts that are not procured competitively as to such contracts that are procured competitively in the findings of fact and conclusions of law.

Second, we note that Southern California Edison Company (“SCE”), Pacific Gas & Electric Company (“PG&E”), San Diego Gas & Electric Company (SDG&E”), the Center for Energy Efficiency and Renewable Technologies (“CEERT”), and the California Wind Energy Association (“CalWEA”) have jointly asked the Commission to bifurcate the issues addressed in the Draft Resolution and to provide the parties with more time to respond to certain of the issues the Draft Resolution addresses. CLECA concurs that bifurcating the issues addressed in the Draft Resolution and providing an opportunity to consider eligibility requirements through a workshop and comment process would provide the Commission with potentially important additional information concerning the substance of the Draft Resolution. On March 28, 2008, the Executive Director approved the request of SCE, PG&E, CEERT and CalWEA. This appears to address many of the concerns these parties have raised regarding the need for more time to address certain of the issues contained in the resolution. CLECA supports this action and expedited consideration by the Commission of the ratemaking and accounting changes that are needed to implement SB 1036.

Third, from a policy perspective, CLECA is also concerned that more effort is needed to assure that the economic benefit to all customer classes that provided these funds is maximized, consistent with the intent of AB 1036. In particular, CLECA believes that the Commission should move to adopt *parallel* limitations on above-market payments for renewable contracts that are procured through bilateral contracts as are adopted for those procured competitively. The Draft Resolution makes it clear that utilities “can enter into and seek Commission approval for contracts with prices above the MPR even if the project is ineligible for AMFs and/or if the IOU’s cost limitation has been reached.” (Draft Resolution, p. 23). While the Draft Resolution cites Public Utilities Code § 399.15(d)(4) as giving the utilities the ability to voluntarily propose procurement of eligible renewable resources at above-market prices that are *not* counted toward the cost limitation, the statute also states that any such arrangements shall be subject to Commission approval prior to the expense being recovered in rates. The original intent of directing the SEP funding to competitively procured renewables was both to provide an economic benefit to qualifying renewable resources and to support competitive procurement. If the Commission permits bilateral renewable contracts with no limits on above-market payments while imposing limits on such payments to competitively procured renewable contracts, the procurement process will clearly favor the former and the Commission’s interest in promoting competitive procurement will be significantly undermined. The Draft Resolution appears to address this problem, in part, by expressing the intent to apply the same review standards to

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bilateral arrangements as to competitively procured contracts. CLECA strongly believes, however, that bilateral renewable contracts should also be subject to parallel funding limitations to avoid the creation of a double standard between competitively and non-competitively procured renewable resources.

Very truly yours,

Davis Wright Tremaine LLP

Edward W. O'Neill

Counsel to The California Large Energy Consumers Association

cc: President Michael R. Peevey (via electronic mail and hand delivery)
Commissioner John A. Bohn (via electronic mail and hand delivery)
Commissioner Timothy A. Simon (via electronic mail and hand delivery)
Commissioner Rachelle B. Chong (via electronic mail and hand delivery)
Paul Clanon, Executive Director, CPUC (via electronic mail and hand delivery)
Sean Gallagher, Director, Energy Division, CPUC (via electronic mail and hand delivery)
Paul Douglas, Energy Division, CPUC (via electronic mail and hand delivery)
Cheryl Lee, Energy Division, CPUC (via electronic mail and hand delivery)
Parties on Service List R.06-05-027 (via electronic mail or US Mail)
Parties on Service List R.06-02-012 (via electronic mail or US Mail)

CERTIFICATE OF SERVICE

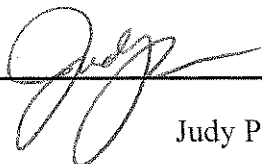
I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 600, San Francisco, California 94111-6533.

On April 1, 2008, I caused the following to be served:

CLECA'S COMMENTS ON DRAFT RESOLUTION E-4160

via electronic mail to all parties on the service lists R.06-05-027 and R.06-02-012 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as "Appearance" and "State Service" on these service lists who have not provided an electronic mail address.


Judy Pau

VIA HAND DELIVERY AND EMAIL

President Michael R. Peevey
Commissioner John A. Bohn
Commissioner Timothy A. Simon
Commissioner Rachelle B. Chong
Paul Clanon, Executive Director
Sean Gallagher, Director, Energy Division
Paul Douglas, Energy Division
Cheryl Lee, Energy Division